further participation in the hostilities. It resembles in character the temporary confinement necessary to the exclusion or deportation of aliens.[4]

The court took the position that the parties to the civil war in Mexico are belligerents according to the law of nations,[5] and the fact that the United States has not accorded official recognition of belligerency, does not affect its right and duty to execute the treaty provision with respect to the troops that may seek asylum within its territory.

At the time of the Cuban troubles, 1897-1898, the Executive recognized the existence of a state of actual fighting though the belligerency of the insurgents was never recognized. In the case of The Three Friends,[6] the Supreme Court held that such a condition of actual fighting was sufficient to bring into force the neutrality laws of the United States. It can be in this sense only that the court in the present case can hold the provisions of the Hague Treaty applicable, for there has been no recognition of the parties as belligerents according to the law of nations.

E. H. E.

MINING LAW: EXTRALATERAL RIGHT: APEX.—The federal district court of Idaho has just rendered an opinion[1] which calls to mind a case decided on the identical physical facts and previously noted in this Review.[2] The question presented for decision in both cases was whether the end edge of a vein cut off against a fault plane so that the edge of the vein terminating against the fault turned at more than a right angle from its previous course and passed out vertically underneath one of the end lines of the location, constituted an apex on which could be predicated an extralateral right. The federal court reached the same general conclusion as that of the state court, and held that such an end edge of a vein does not constitute an apex within the meaning of the statute conferring extralateral rights.[3]

The Court said: "We are not to conclude that an edge is the apex merely because the vein may be followed therefrom upon an inclination downward; clearly cases may very well arise where such a course can be followed from an undercut or bottom edge. Nor is it controlling that such downward course may be parallel with the end lines. The real relation of any given edge to the vein is no wise affected by its relation to the boundary lines of the claim embracing it. These lines are wholly artificial

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[4] Wong Wing v. U. S., (1896) 163 U. S. 228, 235, 41 L. ed. 140.
[5] Citing 2 Black, (67 U. S.) 667, 17 L. ed. 459.
[6] (1896) 166 U. S. 1.
[1] Stewart Mining Co. v. Bourne et al., (Jan. 16, 1914).
[2] Stewart Mining Co. v. Ontario Mining Co., (1913) 132 Pac. 787 (Idaho) commented on in 1 Calif. Law Review, pp. 546-8 and illustrated by a diagram.
[3] U. S. Rev. Stats. § 2322.

and fortuitous, and if an edge is the top or apex of the vein it is such regardless of the question as to how the boundary lines of the claim are laid, or indeed whether any location at all has been made."

The Court further said, in substance, that the terms "top" or "Apex" as used in the statute are practically synonymous and are not employed in any occult or mysterious sense. They are to be used in the usual sense as men of ordinary intelligence commonly understand them, and looking at the situation broadly and taking into consideration the general position of this vein in the enclosing country it is clearly apparent that the end edge of the vein abutting against the fault can not appropriately be considered an apex.

It is interesting to note that the federal court criticised the proposition announced by the Supreme Court of Idaho in its decision of the earlier case involving the same facts "to the effect that in pursuing a vein extralaterally, it can not be followed more upon the strike than upon the dip, even though such course may in fact be downward,"[4] the federal court saying that "it appears to be out of harmony with the settled rule of this jurisdiction."[5]

W. E. C.

NUISANCE: DAMAGES FOR PERMANENT INJURIES CREATING AN EASEMENT.—The Supreme Court of Kansas in McDaniel v. City of Cherryvale[1] holds that a property owner who sues for damages caused by a nuisance of a permanent nature,—the discharge of sewage,—more than two years after the nuisance began is barred by the statute of limitations from recovering any damages. The nuisance became legalized not by prescriptive enjoyment for a more or less extended period,—from five to twenty years,—but by the running of the statute of limitations against an action for damages in tort,—in the Kansas case, two years. The last named case represents what is probably the law in the majority of the American States.[2] A few, which recognize the doctrine that damages for permanent injuries can be given in a "lump sum," allow the plaintiff to have an election whether he shall sue only for the damages which have accrued to the date of the action, or whether he shall recover *in solido*. But, generally, it is held that the injured land owner must sue for all the damages, if the nuisance is of a permanent character.[3]

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[4] In the comment on the state decision appearing in this Review, 1 Calif. Law Review, p. 548, the same criticism was made.

[5] Citing Bunker Hill etc. Co. v. Empire State etc. Co., (1900) 108 Fed. 189; 134 Fed. 768; Last Chance etc. Co. v. Bunker Hill etc. Co., (1904) 131 Fed. 579.

[1] (Dec. 6, 1913) 136 Pac. 899 (Kans.)

[2] See note in 10 Ann. Cas. 184.

[3] Sedgwick, Damages, 9th Ed., sec. 95.